

ADMINISTRATIVE AND LEGAL DIVISION

HEADQUARTERS PERSONNEL - NASHVILLE

COMMISSIONER'S OFFICE

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David Braam, Legislative Liaison

Laurie Daaboul, Commissioner's Assistant

ADMINISTRATIVE AND LEGAL DIVISION

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Mary Jane Friedmann, Accountant/Auditor 1

Barbara Jones, Administrative Services Assistant

Paul Battenfield, Information Systems Director

Tim Jones, Information Systems Consultant

Charles Ingram, Information Systems Coordinator



The Administrative Division administers the Department's budget and oversees fiscal services, human resources, training and development, and information systems.

The Department continues to work with both the Department of Personnel and the Department of Finance and Administration to develop and improve career path with salary progression for our examiners.

Training is another integral part of developing and maintaining a qualified examiner staff. To ensure value, the Department's training needs are annually assessed and budgeted. The majority of the structured training curriculum is acquired through external training sources such as the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Educational Foundation of the Conference of State Bank Supervisors, the National Association of the State Credit Union Supervisors, the Federal Financial Institutions Examination Council, the National Association of Consumer Credit Administrators, the Money Transmitter Regulators Association, as well as other sources.

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The Legal Division provides legal advice and representation for the Department. The Department's lawyers advise the Commissioner and departmental personnel in all legal matters affecting the Department. They work with regulated entities and the general public in addressing legal issues. The Department's lawyers also work closely with the Governor's Office and the Tennessee General Assembly on legislative issues affecting financial institutions. The Legal Division assists in the coordination of enforcement initiatives with other federal and state regulators as well as with various law enforcement agencies.

In 2006, the Legal Division was heavily involved in the 2006 Legislative session by tracking bills, working closely with the Governor's Office, the General Assembly, and other groups sponsoring legislation that impacted the Department. This division also provided assistance to operating divisions within the Department on issues involving implementation of the new Tennessee Home Loan Protection Act, as well as continuing support and assistance in consumer complaints, enforcement actions, and statutory interpretations involving all regulated entities.

2006 LEGISLATIVE HIGHLIGHTS

2006 LEGISLATION

Public Chapter 596

Amends T.C.A. § 45-2-1603 and T.C.A. § 45-18-113
Effective Date 5/4/06

Public Chapter 596 amends TCA § 45-2-1603 by adding a new subsection (a)(13) and TCA § 45-18-113 by adding a new subsection (d) with regard to examinations of regulated institutions. Public Chapter 596 grants the Department the authority to share certain examination information with Federal and state regulatory and investigatory agencies in order to report suspected violations of the Bank Secrecy Act (BSA), as well as to promote compliance with the same. The amendment also provides the Department with the authority to execute agreements with federal regulatory agencies to be able to share BSA information.

Public Chapter 563

Amends T.C.A. § 45-5-403
Effective Date 7/1/06

Public Chapter 563 amends TCA § 45-5-403(a)(4) of the Tennessee Industrial Loan and Thrift Companies Act regarding delinquency charges an industrial loan and thrift company may assess for late payments by raising the fee from \$10.00 to \$15.00.

Public Chapter 632

Amends T.C.A. Title 47, Chapter 32, Part 1
Effective Date 7/1/06

Public Chapter 632 revises and clarifies the Good Funds Act of 2005. Pursuant to the new clarifications, a teller's check or an official check is now permissible so long as 1) it is issued by a financial institution and 2) it is drawn on or payable through a financial institution. This amendment clarifies the ability of a bank to make a direct deposit into an account of the settlement agent at the bank. Finally, this bill provides that loans to builders and developers on unimproved real property shall be treated as commercial loans. Therefore, they are exempt from the good funds restrictions.

Public Chapter 660

Amends T.C.A. Title 45, Chapter 2
Effective Date 5/12/06

Public Chapter 660 revises and streamlines the chartering process for Tennessee de novo banks as described in Tennessee Code Annotated, Title 45, Chapter 2. Organizers will be able to apply for a charter as soon as the notice of intent to form a bank is given to the Department. In addition, organizers can begin to collect subscriptions in escrow as soon as the Notice of Intention has been accepted. Once the charter has been granted, organizers may act in the name of the corporation and engage in certain business activities while the application for the certificate of authority is being reviewed by the Department. The revisions further provide that if the certificate of authority is not issued by the Department the organizers have the option of renaming the corporation and using the charter for a non-bank purpose.

Under the new provisions, the Commissioner of the Department is given discretion to set minimum capital requirements for organizers, as well as limited discretion, consistent with Federal guidelines, to permit an individual previously

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convicted of a crime to serve as an officer or director as long as the crime committed was not financial in nature and the Commissioner finds the person has been rehabilitated.

The new provisions further allow for a bank or trust company to organize as a limited liability company.

Public Chapter 801

Amends Title 47

Effective Date 1/1/07


Public Chapter 801 amends Title 47 by enacting the Tennessee Home Loan Protection Act (THLPA). The THLPA defines high-cost home loans, places certain prohibitions and limitations on these loans, offers borrowers a right to cure a default and creates a private right of action against lenders for violations of the Act. The THLPA also places enforcement and regulatory authority with the Department.

High-Cost Home Loan Defined: Excludes residential mortgage transactions as defined in 12 C.F.R. Section 226.2(a)(24), reverse mortgage transactions as defined in Title 47, Chapter 30 of the Tennessee Code Annotated, loans insured by/sold to a government agency, and construction loans as defined in the THLPA, as well as open-end loans as defined in 12 C.F.R. Section 226.2(a)(20) unless used to evade the THLPA. Otherwise, applies to closed-end consumer home loans (See THLPA Section 1(10)(A)) that meet or exceed one of the following thresholds: *Rate:* Same as the Federal Home Ownership and Equity Protection Act ("HOEPA") and 12 C.F.R. 226.32 (a)(1)(i), or; *Points and Fees:* for loans more than \$30,000 - exceed the greater of 5% of total loan amount or \$2,400; for loans \$30,000 or less - exceed 8%. (Points and Fees defined: Generally, similar to Federal HOEPA, see 12 C.F.R. 226.32 (b); but, excludes: 2 bona fide loan discount points as defined in the THLPA and real-estate related fees as defined in 12 C.F.R. 226.4 (c)(7) paid to a 3rd party or an affiliate if reasonable.)

The Act places the following prohibitions and limitations in the making of high-cost home loans: The lender (See THLPA Section 2(8)) shall not encourage default or payment skipping; the borrower is entitled to receive two pay-off statements free of charge within a 12 month period. A lender may charge a reasonable fee for additional requests; the lender may charge actual cost for recording release; the lender shall not knowingly or intentionally make a high-cost home loan within 30 months of existing home loan where new loan has no reasonable benefit to the borrower considering all the circumstances; the Act permits financing of single premium credit insurance where total benefits payable from all policies combined do not exceed \$50,000, the principal amount of financed premiums is repayable during the policy term and the amounts payable under a credit life insurance policy shall not be more than 103 percent on the unamortized principal balance; the lender must reasonably believe that borrower will be able to repay the loan considering borrower's obligations other than borrower's equity in home. A borrower shall be deemed to be able to repay the loan if the borrower's total monthly debt at closing, including amounts owed under the loan, do not exceed 50 percent of borrower's monthly gross income; the lender shall not directly or indirectly finance points and fees in excess of the greater of three percent or \$1,500 if total loan amount is more than \$30,000 or five percent if total loan amount is \$30,000 or less. Registrants under Tennessee's Industrial Loan and Thrift Companies, Title 45, Chapter 5, may finance as points and fees an amount not to exceed the charges allowed pursuant to § 45-5-403(a)(1)(A) on loans made under the provisions of Title 45, Chapter 5; the Act prohibits charging of points and fees in connection with refinancing an existing high-cost home loan with a high-cost home loan where loan is with the same lender or affiliate of the lender. This prohibition does not apply to additional proceeds, as defined in the THLPA; limits prepayment penalties in excess of two percent in the first 24 months; no prepayment penalties can be charged where refinancing is with the same lender or affiliate. This provision sets forth the permissible refund method; prohibits balloon payments; prohibits negative amortization. Payment schedule cannot cause the principal to increase; the lender cannot accelerate the debt in its sole discretion; the lender cannot require more than two payments to be consolidated and paid in advance from loan proceeds; the interest rate cannot be increased after the borrower defaults; late payment fees may not exceed the greater of five



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percent or \$15. They may be only assessed for a payment past due 10 days or more; contains a notice which must be given to the borrower, at least three business days before closing, which tells borrower to shop around, that the lender will have lien on home and that borrower can obtain list of credit counselors from Housing and Urban Development or the Tennessee Department of Financial Institutions; requires a redisclosure, at least one business day before closing, when material changes in interest rate, term, type of loan, or settlement charges are made. The Act defines "materially different settlement charges" as 15 percent or greater. It also establishes specified locations for high cost home loan closings; requires quarterly reporting of favorable and unfavorable payment history information to a nationally recognized consumer credit reporting agency; requires notation on mortgage or deed of trust and note that this instrument is a high-cost home loan; cannot leave material terms blank on any loan related document. Cannot modify a loan document after closing without consent in writing of persons affected, or by valid power of attorney, and; must provide borrower with a separate document listing third party non-profit credit counselors not later than the time that the good faith estimate is provided.

The Act affords borrowers the right to cure a default on a high-cost home loan up to three days before foreclosure; borrower may exercise once in a 12-month period. It also requires that actual notice of right to cure be sent to borrower. In addition, a purchaser or an assignee of a high-cost home loan is liable for any claims or defenses that could be raised against the original lender unless the purchaser or assignee can show the exercise of due diligence.

The Act grants the Tennessee Department of Financial Institutions regulatory authority, interpretive and rulemaking authority; examination authority with respect to persons subject to the Department's regulatory jurisdiction as well as persons reasonably suspected of being subject to the Department's regulatory jurisdiction; authority to issue subpoenas and require the production of documents; authority to issue cease and desist orders, assess civil money penalties up to \$10,000 per violation, require restitution to borrowers and suspend, revoke or refuse to renew a license; authority to bar individuals from the industry; and bring actions in chancery court. State Attorney General's Office may also bring an action for violations of the THLPA.

Also, the Act creates a private right of action for violations of the THLPA; contains a three year statute of limitations; allows for actual damages, statutory damages for willful or intentional violations, punitive damages for malicious or reckless violations as well as costs and reasonable attorney's fees; and, requires notice of any civil action under the THLPA be given to the Department of Financial Institutions.

Finally, the Act provides that it is preempted to the extent it is in conflict with or inconsistent with the National Bank Act, the Homeowner's Loan Act, the Federal Credit Union Act or regulations issued by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the National Credit Union Administration, and as interpreted by the federal courts, with respect to national and state banks, trust companies, federal and state savings institutions, and federal and state credit unions and their operating subsidiaries.

Public Chapter 854

Amends T.C.A. § 49-6-1205

Effective Date 6/2/06

Public Chapter 854 amends T.C.A. § 49-6-1205 to allow local education authorities to include courses in personal finance to the list of subjects that satisfy the required curriculum a student must complete to graduate from high school in Tennessee. Under the provisions of this chapter, a student completing a ½ unit credit in a personal finance course, developed by the Department of Education and approved by the State Board of Education, may now satisfy the course requirement in the essentials of the free enterprise system (i.e. economics) as required by T.C.A. Section 49-6-1205 to graduate from high school.

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Public Chapter 622

Amends T.C.A. Title 48, Chapter 18, Part 1

Effective Date 7/1/06

Public Chapter 622 amends the Tennessee Consumer Protection Act by adding a new section that prohibits retailer-issued gift cards from expiring in less than two years. In addition, within the two year period, retailers are prohibited from imposing acquisition and maintenance fees that have the effect of reducing the total amount for which the holder of the gift certificate or gift card may redeem the gift card. The provisions of this chapter do not apply to cards distributed for customer loyalty, sold below face value and at a volume discount; cards sold by a non-profit for fundraising purposes; cards issued to an employee in recognition of service; cards usable with multiple, unaffiliated sellers of goods or services, or; prepaid calling cards.

Public Chapter 683

Amends T.C.A. Title 48, Chapter 18

Effective Date 7/1/06

Public Chapter 683 amends the Tennessee Consumer Protection Act to add a new section dealing with the disclosure of debit holds. The new provision requires any business that provides goods and services and that initiates a preauthorized debit card transaction that is more than 25% of the actual transaction, or \$50.00, whichever is greater, to disclose at the time and point of the sale that a hold will be placed on the customer's debit card account. If the hold is placed on an account due to a transaction occurring at an unmanned remote terminal, then the disclosure must be conspicuous at the place where the transaction occurs. In cases where the hold is part of a contractual agreement the notice must be conspicuous on the written document. A violation of the chapter constitutes an unfair and deceptive act or practice.

Public Chapter 677

Amends T.C.A. Title 25, Title 26, Title 45, Title 47 and Title 58

Effective Date 7/1/06

Public Chapter 677 amends TCA § 26-1-111 by suspending certain foreclosure proceedings with regard to property, both real and personal, owned by a member of the Tennessee National Guard called to active service. Pursuant to amendments, foreclosure on real property or the repossession of a motor vehicle under terms of a purchase agreement made by a member of the state National Guard called to active military service and serving in foreign hostile conflict is stayed for 90 days after the guardsman has returned to the state. In order to exercise this benefit, the guard member must provide a written statement to the holder of the debt with deployment orders attached giving an expected date of return to the state. The holder of the debt is further entitled to rely on the anticipated date of return when seeking foreclosure or repossession.



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2006 FISCAL NUMBERS AT A GLANCE

The Department of Financial Institutions receives no federal or state taxpayer funds and is fully funded by the fees assessed to the financial institutions regulated and supervised by the Department.

At the end of Fiscal Year 2006, a rebate of \$1,242,190.40 was distributed to state banks in accordance with Tennessee Code Annotated (T.C.A.) Section 45-1-118(d)(2) while \$2,828,556.17 was reverted to the state's general fund from surplus funds not associated with the bank assessment fees. Most of this reversion is the result of the Department being given the responsibility for regulating two new industries over the past two fiscal years.

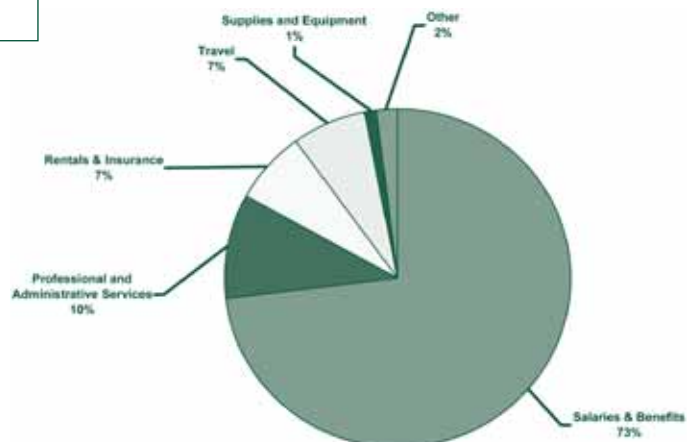
In fiscal year 2005, the Department was given the responsibility of regulating mortgage loan originators. In fiscal year 2006, the Department was given the responsibility of regulating title pledge lenders. It can take several months to put a new regulatory infrastructure into place. As a result, the Department collected new revenue on an annualized basis, but only experienced increases in the associated expenditures for a portion of each respective fiscal year. The costs associated with these new programs (examiners, equipment, and office space) were realized gradually over time and are now aligned with the associated revenues.

EXPENDITURE AND FUNDING SOURCES

FY 2005 - 2006

REVENUES	
Appropriations-Bank Assessment Fee	\$7,461,700.10
Other Banking Fees	\$290,486.08
BIDCO's & Trust Company Fees	\$26,772.47
Credit Union Fees	\$1,738,257.61
Money Order Fees	\$139,296.00
Loan Company Fees	\$568,050.00
Insurance Premium Finance Company Fees	\$35,950.00
Mortgage Company Fees	\$3,707,750.00
Check Cashers Fees	\$370,600.00
Deferred Presentment Fees	\$1,033,400.00
Title Pledge Lender Fees	\$629,325.00
Miscellaneous	\$1,200.00
TOTAL REVENUES	\$16,002,787.26

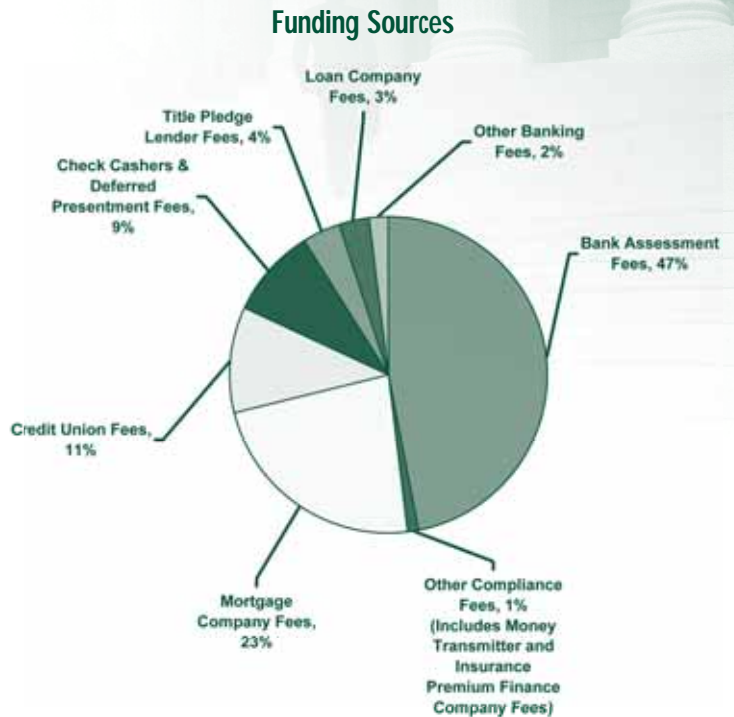
Expenditure Sources



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EXPENDITURES	
Personal Services	\$6,546,551.22
Employee Benefits	\$2,164,695.31
TOTAL PAYROLL	\$8,711,246.53
Travel	\$834,932.90
Printing Duplicating and Film Processing	\$46,988.29
Communication & Shipping Costs	\$44,940.13
Maintenance, Repair & Services	\$4,256.60
Professional and Administrative Services	\$1,215,320.59
Supplies	\$170,410.10
Rentals & Insurance	\$817,092.35
Awards & Indemnities	\$2,982.04
Grants & Subsidies	\$68,133.52
Unclassified	\$3,200.00
Equipment	\$12,537.64
TOTAL OPERATIONAL	\$3,220,794.16
TOTAL EXPENDITURES	\$11,932,040.69

EXCESS OF REVENUE OVER EXPENDITURES	
	\$4,070,746.57
Rebated to Banks	\$1,242,190.40
Reverted to the State's General Fund	\$2,828,556.17



2006 TECHNOLOGICAL ADVANCEMENTS

GROUPWISE 7.0

Novell GroupWise has been used in the Tennessee Department of Financial Institutions for several years. The Department has been in the process of migrating to the latest version to take advantage of its newest functionality and stay compliant with the latest supported version of Novell GroupWise e-mail. The Department relies on GroupWise for secure business communications and staying current in this telecommunications package is paramount for efficiency and effectiveness in business operations.

REMOTE MANAGEMENT

The Department now has the capability to remotely manage computers that are integrated into the Novell management system. Since the Department has locations in Chattanooga, Knoxville, Jackson, Nashville, Murfreesboro and in Memphis which make Information Technology (IT) service and support a challenge, this remote management capability will enable the IT staff to better serve employees and assist in reducing travel costs to remote assistance sites.